

Assembly Bill No. 6

Passed the Assembly July 23, 2009

Chief Clerk of the Assembly

Passed the Senate July 23, 2009

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2009, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to add Section 14166.221 to, and to add Article 5.4 (commencing with Section 14180) to Chapter 7 of Part 3 of Division 9 of, the Welfare and Institutions Code, relating to Medi-Cal, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 6, Evans. Medi-Cal.

(1) Existing law provides for the Medi-Cal program, which is administered by the State Department of Health Care Services and under which qualified low-income persons receive health care benefits. The Medi-Cal program is, in part, governed and funded by federal Medicaid provisions.

Existing law establishes the Medi-Cal Hospital/Uninsured Care Demonstration Project Act that revises hospital reimbursement methodologies in order to maximize the use of federal funds consistent with federal Medicaid law and stabilize the distribution of funding for hospitals.

Under existing law, to the extent required to maximize available federal funds under the demonstration project and to the extent authorized by the Special Terms and Conditions for the demonstration project, the department may claim federal reimbursement for expenditures in a certain priority order, as specified.

This bill would provide, notwithstanding the above-described provisions, in order to maximize federal claiming under the demonstration project, that the department shall have broad discretion to claim federal reimbursement consistent with all applicable federal claiming rules for certain expenditures in an order of priority determined by the department. This bill would authorize the department to claim for any and all additional demonstration project funding made available pursuant to any amendments to the demonstration project made on or after October 1, 2008, or pursuant to any federal laws that increase the amount of available funding, including, but not limited to, the federal American Recovery and Reinvestment Act of 2009. This bill would

provide that any amounts received in the 2008–09, 2009–10, and 2010–11 fiscal years from the federal government pursuant to additional demonstration project funding, as specified in the above provisions, shall be deposited in the Federal Trust Fund and would authorize the Department of Finance to authorize expenditure of these funds, as specified.

This bill would require the department to submit an application to the federal Centers for Medicare and Medicaid Services (CMS) for a waiver or demonstration project that would implement specified objectives. The bill would require the waiver or demonstration project to include designated restructuring proposals for the organization and delivery of services under the Medi-Cal program. The bill would require the department to submit the waiver or demonstration project application to the CMS by a date that allows sufficient time for the waiver or demonstration project to be approved by no later than September 1, 2010, or the conclusion of any extension period granted in the demonstration project set forth in the Medi-Cal Hospital/Uninsured Care Demonstration Project Act, whichever happens last.

(2) This bill would require the California Health and Human Services Agency or successor entity or designated department to submit an implementation plan to the appropriate policy and fiscal committees of the Legislature for implementation of the federally approved waiver or demonstration project for purposes of improving health care for low-income Californians, as specified. This bill would provide that the department shall only implement the waiver or demonstration project upon submittal of an implementation plan to the appropriate policy and fiscal committees of the Legislature at least 60 days prior to any appropriation.

This bill would require the agency or successor entity or designated department, prior to preparing the implementation plan, to convene a stakeholder committee to advise on preparation of the implementation plan, as specified.

The California Constitution authorizes the Governor to declare a fiscal emergency and to call the Legislature into special session for that purpose. The Governor issued a proclamation declaring a fiscal emergency, and calling a special session for this purpose, on July 1, 2009.

This bill would state that it addresses the fiscal emergency declared by the Governor by proclamation issued on July 1, 2009, pursuant to the California Constitution.

This bill would declare that it is to take effect immediately as an urgency statute.

The people of the State of California do enact as follows:

SECTION 1. Section 14166.221 is added to the Welfare and Institutions Code, to read:

14166.221. (a) It is the intent of the Legislature for the department to maximize the receipt of federal funds for California's Medi-Cal program, including this demonstration project, by identifying state resources which will enable the state to obtain additional federal reimbursement during this unprecedented fiscal crisis. It is further the intent of the Legislature that any program identified by the department for the purposes specified in this section shall not be modified or altered in any manner unless subsequent statutory authority is expressly provided by the Legislature.

(b) Notwithstanding Section 14166.22, in order to maximize federal claiming under the demonstration project, the department shall have broad discretion to claim federal reimbursement consistent with all applicable federal claiming rules for the following expenditures in an order of priority determined by the department:

(1) Expenditures in programs funded in whole or in part by realignment funds under Chapter 6 (commencing with Section 17600) of Part 5, including, but not limited to, the County Medical Services Program.

(2) Expenditures in programs funded in whole or in part by the County Mental Health Services Act.

(3) Other public expenditures, to the extent the department determines the expenditures to be appropriate for claiming under the demonstration project.

(4) Expenditures in any programs referenced in subdivision (a) of Section 14166.22 or other state-only funded programs as the department, in its discretion, determines should be used for the purposes of this section. These programs may include programs administered by other state agencies or departments.

(c) The department shall have discretion to claim under this section for any and all additional demonstration project funding made available pursuant to any amendments to the demonstration project made on or after October 1, 2008, or pursuant to any federal laws that increase the amount of available funding, including, but not limited to, the federal American Recovery and Reinvestment Act of 2009 (Public Law 111-5). This additional funding shall include federal funds made available due to an increase in the federal medical assistance percentage in addition to any other increase in the amount of federal funding.

(d) Any amounts received in the 2008–09, 2009–10, and 2010–11 fiscal years from the federal government pursuant to additional demonstration project funding as specified in this section shall be deposited in the Federal Trust Fund. Notwithstanding Section 28.00 of the Budget Act of 2009, the Department of Finance may authorize expenditure of these funds in a manner consistent with federal law and that offsets General Fund expenditures otherwise authorized in the Budget Act of 2009 for the Medi-Cal program, and as appropriated in Item 4260-101-0001, or for the Health Care Support Fund. For any adjustments made under the authority provided for by this section, the Department of Finance shall provide notification in writing to the chairperson of the Joint Legislative Budget Committee not less than 30 days prior to the effective date of the adjustment, or not sooner than whatever lesser time the chairperson of the Joint Legislative Budget Committee, or his or her designee, may in each instance determine. The notification to the chairperson of the joint committee shall include, at a minimum, the amounts of the proposed appropriation adjustments, a description of any assumptions used in making the adjustments, the relevant federal authority, and any other clarifying description as relevant.

(e) If the federal Centers for Medicare and Medicaid Services or any federal or state court issues a ruling that any or all federal dollars obtained by claiming for expenditures from any particular program referenced in subdivision (b) cannot be used to increase state revenues, the department may discontinue use of those expenditures for claiming under this section and substitute other expenditures from other programs referenced in subdivision (b) at its discretion.

(f) Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the department may implement this section by means of a provider bulletin, or other similar instruction, without taking regulatory action. The department shall also provide notification to the Joint Legislative Budget Committee within five working days if that action is taken in order to inform the Legislature that the action is being implemented.

SEC. 2. Article 5.4 (commencing with Section 14180) is added to Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions Code, to read:

Article 5.4. Health Care Coordination, Improvement, and Long-Term Cost Containment Waiver or Demonstration Project

14180. (a) The department shall submit an application to the federal Centers for Medicare and Medicaid Services for a waiver or a demonstration project to implement all of the following:

(1) Strengthen California's health care safety net, which includes disproportionate share hospitals, for low-income and vulnerable Californians.

(2) Maximize opportunities to reduce the number of uninsured individuals.

(3) Optimize opportunities to increase federal financial participation and maximize financial resources to address uncompensated care.

(4) Promote long-term, efficient, and effective use of state and local funds.

(5) Improve health care quality and outcomes.

(6) Promote home-and community-based care.

(b) The waiver or demonstration project shall include proposals to restructure the organization and delivery of services to be more responsive to the health care needs of Medi-Cal enrollees for the purpose of providing the most vulnerable Medi-Cal beneficiaries with access to better coordinated and integrated care that will improve their health outcomes, slow the long-term growth of the Medi-Cal program, and continue support for the safety net care system and the persons who rely on that system for needed care. These restructuring proposals may include, but are not limited to, the following:

(1) Better care coordination for seniors and persons with disabilities, dual eligibles, children with special health care needs, and persons with behavioral health conditions, which shall include the establishment of organized delivery systems that incorporate a medical home system and care and disease management, as well as incentives that reward providers and beneficiaries for achieving the desired clinical, utilization, and cost-specific outcomes.

(2) Improved coordination between Medicare and Medi-Cal coverage.

(3) Improved coordination of care for children with significant medical needs through improved integration of delivery systems and use of medical homes and specialty centers, and providing incentives for specialty and nonspecialty care.

(4) Improved integration of physical and behavioral health care.

(c) In developing the waiver or demonstration project application, the department shall consult on a regular basis with interested stakeholders and the Legislature.

(d) The department shall determine the form of waiver most appropriate to achieve the purposes listed in subdivision (a).

(e) The department shall submit the waiver or demonstration project application to the federal Centers for Medicare and Medicaid Services by a date that allows sufficient time for the waiver or demonstration project to be approved by no later than September 1, 2010, or the conclusion of any extension period granted in California's Medi-Cal Hospital/Uninsured Care Section 1115(a) Medicaid Demonstration (No. 11-W-00193/9), whichever happens last.

(f) In order to restructure the Medi-Cal program to improve the delivery of care for specified populations and secure the maximum amount of federal financial participation allowable, any waiver or demonstration project application submitted pursuant to subdivision (a) may specify and seek authority to enroll beneficiaries into specified organized delivery systems. Subject to federal approval, the specified organized delivery systems may include the utilization of an enhanced primary care case management model, a medical home model, or managed care model. The department is authorized to enroll beneficiaries in an organized system of care subject to the conditions in Section 14181. Subject to federal approval, any waiver or demonstration project application submitted pursuant to subdivision (a) shall include processes, and accompanying

criteria, by which the department will evaluate and grant exemption, on an individual basis, from this section's requirements pertaining to the mandatory enrollment of beneficiaries in specified organized delivery systems.

(g) (1) The department shall only implement the waiver or demonstration project upon submittal of an implementation plan, pursuant to Section 14181, to the appropriate policy and fiscal committees of the Legislature at least 60 days prior to any appropriation.

(2) Pursuant to paragraph (1), mandatory enrollment in any organized delivery system authorized pursuant to a waiver or demonstration project authorized pursuant to this article shall only occur when funds necessary to support that effort have been appropriated.

(3) It is the intent of the Legislature to neither impede nor limit the department's existing statutory authority regarding the operation of the Medi-Cal program and its health care delivery systems by the enactment of this article.

(h) The director shall have the discretion to utilize state plan amendments, in whole or in part, to accomplish any or all purposes of this article. In the event the director proceeds with state plan amendments as specified, the department shall provide notification in writing to the chairperson of the Joint Legislative Budget Committee within 15 working days of that action and a brief description and purpose of the amendment. This amendment shall be made available to the Joint Legislative Budget Committee upon the request of the chairperson.

14181. (a) The California Health and Human Services Agency or successor entity or designated department shall submit an implementation plan to the appropriate policy and fiscal committees of the Legislature for implementation of the federally approved waiver or demonstration project. The implementation plan shall be developed in consultation with a stakeholder advisory committee established pursuant to subdivision (b). The implementation plan shall specifically address the multiple and complex needs of seniors and persons with disabilities, dual eligibles, children with special health care needs, and persons with behavioral health conditions, and the specific strategies the agency or successor entity or designated department will use to ensure the provision of quality,

accessible health care services under the waiver or demonstration project, including, at a minimum, the following elements:

(1) Criteria, performance standards, and indicators shall be adopted to ensure that plan services meet the multiple and complex needs of beneficiaries and comply with the requirements of this article. The performance standards shall incorporate, at a minimum, existing statutory and regulatory requirements and protections applicable to two-plan model and geographic managed care plans, as well as those protections available under the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code), but in addition shall include specific requirements and standards based on the multiple and complex care needs of seniors and persons with disabilities, dual eligibles, children with special health care needs, and persons with behavioral health conditions, including, but not limited to, standards where applicable to the organized delivery system model in all of the following areas:

- (A) Plan readiness.
 - (B) Availability and accessibility of services, including physical access and communication access.
 - (C) Benefit management and scope of services.
 - (D) Care coordination and care management.
 - (E) Beneficiary complaints, grievances, and appeals.
 - (F) Beneficiary participation.
 - (G) Continuity of care.
 - (H) Cultural and linguistic appropriateness.
 - (I) Financial management.
 - (J) Measurement and improvement of health outcomes.
 - (K) Marketing, assignment, enrollment, and disenrollment.
 - (L) Network capacity, including travel time and distance and specialty care access.
 - (M) Performance measurement and improvement.
 - (N) Provider grievances and appeals.
 - (O) Quality care.
 - (P) Recordkeeping and reporting.
- (2) Strategies to be used to monitor performance of all contractors and to ensure compliance with all components of the waiver or demonstration project.

(3) Provision of a comprehensive timeline of key milestones for implementation of the waiver or demonstration project components.

(4) Provision of a framework for evaluation of the waiver or demonstration project, including the process, timelines, and criteria for evaluating implementation, as well as the method for providing periodic updates of outcomes and key implementation concerns.

(b) Prior to preparing the implementation plan required by this section, the agency or successor entity or designated department, shall convene a stakeholder committee to advise on preparation of the implementation plan. The stakeholder committee shall include, but not be limited to, persons with disabilities, seniors, and representatives of legal services agencies that serve clients in the affected populations, health plans, specialty care providers, physicians, hospitals, county government, labor, and others as deemed appropriate by the agency or successor entity or designated department. The stakeholder committee shall advise on the implementation of the waiver or demonstration project until the expiration of the waiver or demonstration project.

14182. Notwithstanding the Administrative Procedure Act, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the department may implement the provisions of this article through all-county welfare director letters or similar instruction, without taking regulatory action. Prior to issuing any letter or similar instrument authorized pursuant to this section, the department shall notify and consult with stakeholders, including advocates, providers, and beneficiaries, in implementing, interpreting, or making specific this article.

SEC. 3. This act addresses the fiscal emergency declared by the Governor by proclamation on July 1, 2009, pursuant to subdivision (f) of Section 10 of Article IV of the California Constitution.

SEC. 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure that health care for Californians is improved at the earliest possible time, it is necessary for this act to go into immediate effect.

Approved _____, 2009

Governor